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BRIEF

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IN THE

Supreme Court of the United States

BEVERLY R. GILL, *et al.*,
Appellants,
v.

WILLIAM WHITFORD, *et al.*,
Appellees.

On Appeal from the United States District Court for the Western District of Wisconsin

BRIEF FOR THE STATES OF OREGON, ALASKA, CALIFORNIA, CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, KENTUCKY, MAINE, MASSACHUSETTS, MINNESOTA, NEW MEXICO, NEW YORK, RHODE ISLAND, VERMONT, WASHINGTON, AND THE DISTRICT OF COLUMBIA AS AMICI CURIAE IN SUPPORT OF APPELLEES

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QUESTION PRESENTED

Did the district court correctly find that a purpose-and-effects test was a manageable way to determine whether Wisconsin engaged in unconstitutional partisan gerrymandering?

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INTEREST OF THE AMICI STATES

This case is about how to strike the right constitutional balance between ensuring fair elections and respecting the normal political process. The amici States are uniquely qualified to assist the Court in striking that balance. We have a strong interest in ensuring that our elections reflect core democratic principles. Many of us are also defendants in redistricting litigation and have an equally strong interest in ensuring that the courts apply reasonable and manageable legal standards in cases like this one.

The States have a wealth of experience with redistricting and, as explained below, have taken a wide variety of approaches to prevent invidious partisan gerrymandering in that process. That is as it should be in our federalist system, and we do not suggest that any one approach to redistricting ought to be enshrined in constitutional law. But we are united in our conclusion that the Constitution sets outer limits on extreme partisan gerrymandering, that those limits are judicially enforceable and do not intrude on the States' legitimate interests, and that on the facts found by the district court here, Wisconsin's districting map exceeded the outer limits of what is constitutional.

SUMMARY OF ARGUMENT

Intentional partisan entrenchment—that is, deliberately drawing districts for the purpose of keeping one party in power for the long term, and without any neutral justification for the result—has no place in our political system. It discourages voter participa-

tion, increases distrust of government, and reduces the responsiveness of elected representatives. Technological advances have made it easier than ever for mapmakers to draw district lines solely to maximize the political power of a particular party. There is a pressing need for the courts to identify a manageable legal standard that prohibits the most egregious examples of partisan gerrymandering while still respecting the legitimate considerations that inform redistricting decisions.

A purpose-and-effects test is such a standard. It requires proof of both invidious intent and a partisan-entrenching result that cannot be explained by neutral considerations. A proper understanding of this standard's limits should allay the fears voiced by the Texas *et al.* amicus brief that the standard would invalidate numerous state districting maps. The district court correctly struck down Wisconsin's map not because it failed one particular metric in a single year, but because it was invidiously intended to, and did, entrench a single party in power all the way through the next redistricting cycle under any likely electoral scenario, and because the goal of partisan entrenchment was the only explanation for the resulting map

A purpose-and-effects test also leaves ample room for States to continue to experiment with different approaches to redistricting. Many States have taken steps to limit or prevent partisan abuse of the redistricting process, including having nonpartisan or bipartisan groups draw the maps, banning considera-

tion of partisan affiliation or other data in the map-making process, or requiring supermajority votes. The Constitution does not require any of these approaches, but they show—contrary to Texas amici's and the Wisconsin legislature's argument—that partisan politics is not the *sine qua non* of redistricting.

ARGUMENT

Voting forms the foundation of our representative democracy. It serves as a vehicle for voicing preferences and for holding lawmakers accountable to constituents. No other mode of civic participation conveys the will of the people as well as voting. Extreme partisan gerrymandering threatens the benefits that our polity realizes from voting. The courts can and should play a role in protecting those benefits.

A. Extreme partisan gerrymandering harms the States and their citizens, and technological advances have made it easier to accomplish.

Gerrymandering has played a role in American politics since the early eighteenth century. *Vieth v. Jubelirer*, 541 U.S. 267, 274–75 (2004) (plurality op.); Samuel S.-H. Wang, *Three Tests for Practical Evaluation of Partisan Gerrymandering*, 68 Stan. L. Rev. 1263, 1266–67 (2016) (describing historical examples). Both major parties have engaged in partisan gerrymandering. *See, e.g.*, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 410–13 (2006) (opinion of Kennedy, J.) (describing Texas plans that

favored Democrats at one time and Republicans at another).

But what is not a normal or accepted redistricting practice is purposefully entrenching a single political party in power for the long term under any realistic electoral scenario, regardless of whether a majority of voters support that party. Although this Court has not yet agreed on a manageable standard for assessing the legality of partisan gerrymandering, it has recognized unanimously that extreme partisan gerrymandering violates the Constitution. *See Vieth*, 541 U.S. at 292–93 (plurality op.) ("We do not disagree with [the] judgment" that "severe partisan gerrymanders [are incompatible] with democratic principles"; "[t]he issue . . . is not whether severe partisan gerrymanders violate the Constitution, but whether it is for the courts to say when a violation has occurred"; "an *excessive* injection of politics is *un*lawful") (emphasis in original). And a majority of this Court has never abandoned the view, established in *Davis v. Bandemer*, 478 U.S. 109, 125 (1986), that those constitutional limitations are judicially enforceable. *Vieth*, 541 U.S. at 309–10 (Kennedy, J., concurring in the judgment).

Extreme partisan manipulation of the redistricting process is problematic because it can effectively insulate a political party from any realistic attempt by the populace to unseat it. Sam Hirsch, *The United States House of Unrepresentatives: What Went Wrong in the Latest Round of Congressional Redistricting*, 2 Elec. L. J. 179, 202 (2003). In other words,

political control may be determined by the mapmakers, not the voters. *Id.*

The problem is especially acute when the mapmakers are able to entrench one party in power all the way through the next redistricting cycle, thereby ensuring that the same party gets to draw another noncompetitive map that continues the entrenchment. Extreme partisan gerrymandering thus can be self-reinforcing, because it can "shift the terrain on which all future political activity is negotiated." Justin Levitt, *Essay: Weighing the Potential of Citizen Redistricting*, 44 Loy. L.A. L. Rev. 513, 518 (2011).

Enormous improvements in computer technology have revolutionized the way in which districts can be drawn, allowing even more invidious partisan entrenchment. *See* Laura Royden & Michael Li, Brennan Center for Justice, *Extreme Maps* 3 (2017)[1] ("Technology and a growing flood of money into the redistricting process are, by broad consensus, only making the situation" of partisan gerrymandering "worse."); Theodore R. Boehm, *Gerrymandering Revisited—Searching for a Standard*, 5 Ind. J. L. & Soc. Equality 59, 60 (2016) ("[M]odern technology has substantially facilitated a temporary majority's ability to perpetuate its dominance of a legislative body."). Today, mapmakers can draft and change many different proposed maps in rapid succession using electronic

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[1] *Available* at http://www.brennancenter.org/sites/default/files/publications/Extreme%20Maps%205.16.pdf (last accessed Aug. 31, 2017).

databases, computer software, and statistical techniques. Wang, *supra*, at 1267; *see also Vieth*, 541 U.S. at 312 (Kennedy, J., concurring in the judgment) ("Computer assisted districting has become so routine and sophisticated that legislatures, experts, and courts can use databases to map electoral districts in a matter of hours, not months.").

Along with improvements in computer technology, "advances in communication technology have made it possible to gather fine-grained data to micro-target[] district boundaries." Micah Altman & Michael McDonald, *The Promise & Perils of Computers in Redistricting*, 5 Duke J. Const. L. & Pub. Pol'y 69, 77 (2010). States receive and store vast amounts of highly detailed data to use in redistricting—including data from the Census Bureau about race, ethnicity, age, voting history, health coverage, and work status. Catherine McCully, U.S. Bureau of the Census, *Designing P.L. 94-171 Redistricting Data for the Year 2020 Census: The View from the States* 5, 17–18, 22 (2014).[2] Mapmakers can supplement the Census Bureau's population information with election-related data including on partisan affiliation and voting history. Kenneth F. McCue, California Inst. of Tech., *Creating California's Official Redistricting Database* 5–8 (2011).[3]

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[2] *Available at* https://www.census.gov/rdo/pdf/TheViewFromTheStates_2020.pdf (last accessed Aug. 31, 2017).

[3] *Available at* http://statewidedatabase.org/d10/Creating%20CA%20Official%20Redistricting%20Database.pdf (last accessed Aug. 31, 2017).

Mapmakers can use mapping programs to evaluate the effects of drawing a line in one place or the next block over, recalculating how the new districts will affect a plan's adherence to various redistricting criteria. McCully, *supra*, at 8; *see also Brown v. Iowa Legislative Council*, 490 N.W.2d 551, 552–53 (Iowa 1992) (describing how factors can be added or removed in computer generated redistricting maps); Richard L. Engstrom & Michael D. McDonald, *Quantitative Evidence in Vote Dilution Litigation: Political Participation & Polarized Voting*, 17 Urb. Law. 369, 373–77 (1985) (explaining the use of regression analyses and other calculations to predict whether voters belonging to particular racial minority group vote for specific candidates). More detailed data and computer-based district mapping provide the means to create maps that "give undue advantage to whichever political party controls redistricting." Wang, *supra*, at 1269. Thus technological tools enable States to draw and evaluate district boundaries "in exquisite details" and "enhance the possibility that gerrymandered districts may be more durable now than they were even ten years ago." *Id.* at 1267–68.

Durable party entrenchment through extreme gerrymandering causes real, identifiable harms to the democratic system, and to individual voters. It undercuts the fundamental premise that our republican form of government is representative. Moreover, by allowing fewer competitive races, it discourages voter participation, makes the public more distrustful of government, and reduces the responsiveness of elected representatives. Boehm, *supra*, at 62; D. Theodore

Rave, *Politicians As Fiduciaries*, 126 Harv. L. Rev. 671, 684–85 (2013); Daniel R. Ortiz, *Got Theory?*, 153 U. Pa. L. Rev. 459, 486–87 (2004). And it subverts the very purpose of periodic redistricting, which is to make the legislature more responsive—not less responsive—to voters. *Cf.* Ortiz, *supra*, *at* 476–77 ("Nearly every special feature of the House's design" including direct election, regular reapportionment, and frequent elections, "was meant to ensure that it, unlike the other primary structures of the federal government, was highly responsive to public sentiment.").

Of course, there are entirely legitimate reasons why a State may have a large number of noncompetitive elections. Voters may simply prefer the policies of one party over the other overwhelmingly. Or voters with similar political views may tend to cluster in the same areas, meaning that district lines drawn based on reasonable geographic considerations will favor one particular party. Or one party may be poorly organized, leading it to field candidates who have no real chance of garnering majority support. Those circumstances by themselves are not constitutionally problematic. On the contrary, they reflect the ordinary democratic process working as it should to reflect the will of the people.

What are problematic, however, are extreme districting maps that are invidiously intended to, and do, ensure noncompetitive elections *despite* the absence of the kinds of normal political considerations described above. Those maps inflict avoidable harms

on the democratic process and on individual voters, and undermine the public's trust in government. The amici States have a strong interest in preventing those harms.

B. A purpose-and-effects test is manageable and adequately accounts for the States' legitimate interests.

Any test for unconstitutional partisan gerrymandering should require proof of both invidious intent *and* the actual effect of extreme partisan entrenchment that is likely to endure through multiple election cycles and is inexplicable by neutral considerations. The map at issue here cannot satisfy any such test, and the district court's judgment therefore should be affirmed. The concerns raised by Texas amici, and particularly their assessment that maps in dozens of States will be invalid if partisan gerrymandering claims are justiciable, are overstated. Even a map under which one party achieved an entrenched, long-lasting partisan advantage would be constitutional unless the map was adopted with invidious intent and the effect could not be explained by neutral factors. Amici anticipate that such cases will be rare, and that under a purpose-and-effects test, the States will continue to enjoy broad latitude in conducting redistricting.

1. Invidious intent is crucial and is satisfied when a map is chosen for the purpose of entrenching a party against any realistic majoritarian challenge.

Under a purpose-and-effects test, it is not enough for a plaintiff to show that a State's districting map has the *effect* of entrenching one political party in power. Rather, the plaintiff must also show that this was the *purpose* of adopting the map. Although the district court did not articulate the outer limits of what it would take to establish a constitutional violation, it held that the intent component was satisfied here, where the evidence showed that Act 43 was adopted for the deliberate purpose of entrenching a party against any realistic challenge until the next redistricting. J.S. App. 126a.

Those conclusions are correct. Invidious intent is a necessary component of the constitutional standard. This Court's equal protection jurisprudence holds that a law's "disproportionate impact," standing alone, is insufficient to show a constitutional violation. *Washington v. Davis*, 426 U.S. 229, 239 (1976). Instead, "a purpose to discriminate" must be established. *Id.* (quoting *Akins v. Texas*, 325 U.S. 398, 403-04 (1945)); *cf. Cooper v. Harris*, 137 S. Ct. 1455, 1463-64 & n.1 (2017) (explaining the required "legislative intent" showing for a claim of racial gerrymandering under the Equal Protection Clause).

And not just any consideration of voters' political affiliation will establish *invidious* intent. In *Gaffney*

v. Cummings, 412 U.S. 735, 754 (1973), for example, this Court drew a distinction between the use of political affiliation in the redistricting process to "provide a rough sort of proportional representation in the legislative halls of the State," and its use "to minimize or eliminate the political strength of any group or party," suggesting that the former was permissible and that the latter was not.

But the Court need not decide here whether it is ever legitimate to consider political affiliation in districting. Regardless what the outer limits might be, they do not include districting for the *purpose* of entrenching a single party against any realistic majoritarian challenge through the next redistricting. Modifying a political boundary for the purpose of achieving that kind of entrenchment goes too far; that is, the use of political affiliation in drawing boundaries becomes impermissible if the affiliation is "applied in an *invidious* manner or *in a way unrelated to any legitimate legislative objective*." *Vieth*, 541 U.S. at 307 (Kennedy, J., concurring in the judgment) (emphasis added); *see also id.* at 321, 336–37 (Stevens, J., dissenting) (explaining that "purpose [is] the ultimate inquiry," and that "[u]ntil today, however, there has not been the slightest intimation in any opinion written by any Member of this Court that a naked purpose to disadvantage a political minority would provide a rational basis for drawing a district line"); *id.* at 350 (Souter, J., dissenting) (test for impermissible partisan gerrymandering should include assessment of whether "the defendants acted intentionally to manipulate the shape of the district in order to pack or

crack [the plaintiff's political] group"); *id.* at 360 (Breyer, J., dissenting) (use of political affiliation is "unjustified" when "the minority's hold on power is purely the result of partisan manipulation and not other factors").

Proving intent can be difficult. But the very technologies that have made it easier to engage in intentional partisan gerrymandering also may make it easier to discern intent. The computer tools used to create redistricting maps do not decide on their own to weigh partisan criteria; they weigh the criteria they are programmed to consider. *See* Altman & McDonald, *supra*, at 89. Knowing what inputs the mapmakers were asked to use, what shifts were made, what future scenarios were run, and what other maps were being considered provides direct insight into the intent of those controlling the process. *See Vieth*, 541 U.S. at 312–13 (Kennedy, J., concurring in the judgment) (noting that "[t]echnology is both a threat and a promise," and that "new technologies may produce new methods of analysis" that "would facilitate court efforts to identify and remedy the burdens, with judicial intervention limited by the derived standards").

This case provides a good example. Planners developed Act 43 through a process in which they commissioned a number of redistricting plans—all of which complied with traditional neutral redistricting criteria—and then manipulated the political boundaries on those maps to assess the partisan advantage that the modified boundaries would provide. J.S.

App. 126a–140a (setting out findings regarding process through which Act 43 was developed). The map ultimately enacted in Act 43 was selected, and the others rejected, due to its greater capacity to secure one party's legislative majority throughout the decennial period and, thus, its capacity to devalue to the greatest extent possible the votes of individuals whom the mapmakers believed held contrary political viewpoints. *Id.* 140a.

Because it incorporates a requirement of invidious intent, a purpose-and-effects test should leave States with plenty of leeway to experiment with different approaches to redistricting. So long as a districting plan is not adopted for the specific purpose of entrenching a single party in power through the next redistricting, there is no constitutional violation. No sophisticated statistical analysis of a state's maps is required.

2. The test also demands long-term partisan-entrenching effects that cannot be justified by other legitimate considerations.

A purpose-and-effects test also requires proof that the districting map was likely to have its intended effect: that it would ensure that one party remained in power through the next redistricting under any likely electoral scenario regardless of shifts in voter allegiance. The court also would have to find that this effect could not be explained by any legitimate, neutral considerations, such as the State's political geography or its efforts to comply with the Voting

Rights Act. *See Karcher v. Daggett*, 462 U.S. 725, 740 (1983) (identifying as legitimate considerations "making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives").

This attention to effects is also an appropriate part of the constitutional standard. As in other kinds of cases, a plaintiff must show "a burden, as measured by a reliable standard, on the complainants' representational rights." *League of United Latin Am. Citizens*, 548 U.S. at 418 (plurality op.). Thus, a districting map is not an unconstitutional partisan gerrymander unless it in fact achieves extreme, long-term partisan entrenchment.

This means that States have ample room to try different approaches to redistricting without running afoul of the Constitution. Here too, the technologies that make it easier to engage in invidious partisan gerrymandering also give the States the tools to avoid liability. States can and do use computer programs to draw multiple maps that satisfy various legitimate criteria, make detailed predictions about electoral results under a range of possible scenarios, and determine whether any particular map gives one party or the other an unfair advantage.

And even if the map a State chooses does appear to give advantage to a party, sophisticated software can help the State determine if the advantage is caused by political geography or some other legitimate consideration. In other words, it can show if the predicted effects of the map on partisan entrench-

ment can be explained by neutral factors, in which case the map should pass constitutional scrutiny. *Cf. Vieth*, 541 U.S. at 312–13 (Kennedy, J., concurring in the judgment) (noting that "new technologies may . . . make more evident the precise nature of the burdens gerrymanders impose on the representational rights of voters and parties").

Most importantly, if this Court endorses particular metrics as suggestive of satisfying the effect prong of the test, States will be able to model those metrics and ensure that their maps stay within the bounds this Court sets.

In this case, the district court analyzed the effects of Act 43 with proper deference to legitimate state interests. It found that Act 43 achieved entrenchment of one party against any realistic majoritarian challenge, and its findings are amply supported by the evidence of the actual 2012 and 2014 election results and statistical analyses corroborated by those election results. J.S. App. 145a–154a (setting out findings regarding discriminatory effect and concluding that "[i]t is clear that the drafters [of Act 43] got what they intended to get"). Those statistical analyses showed that the entrenchment would last at least through the decade, and possibly beyond, even if a majority of voters supported candidates from the out-of-power party at historic levels. *Id.* 148a–154a. The court also found that Act 43's party-entrenching effects could not be explained by any legitimate state concerns or neutral factors bearing on the apportionment process,

including Wisconsin's natural political geography. *Id.* at 177a–218a.

Thus, the district court correctly held that Act 43 was unconstitutional.

3. Contrary to concerns expressed by Texas amici, a purpose-and-effects standard is not likely to result in widespread invalidation of state districting maps.

Texas amici suggest that the district court's approach would have invalidated redistricting plans in 36 States over the past few decades. Texas Br. 25. But that assertion is based on just one part of the *effects* analysis, the efficiency gap. Under a proper purpose-and-effects test, effects alone are not enough. Even assuming an efficiency gap alone satisfied the effects prong (and the district court did not so hold), plaintiffs in other states would also have to show that those effects were intended.

Texas amici also err in focusing on a single metric—the efficiency gap—and assuming that if a State's election results in a single year yield a high efficiency gap, the effects prong is satisfied and the map is unconstitutional. Texas Br. 26. A purpose-and-effects test in this context would have to look at a full range of metrics, including not only analyses of available election results, but also projections of the map's likely effect over the course of the whole decade until the next redistricting. And Texas amici ignore that even a large efficiency gap is not a problem if it

can be explained by something other than intentional partisan entrenchment for the long-term—for example, if the members of one party tend to cluster more in particular parts of the State than do members of the other party, or if the State has large numbers of uncontested elections.

Properly applied, a purpose-and-effects standard will invalidate only the most extreme maps, like the one drawn by Act 43, where all legitimate considerations are subordinated to the single goal of long-term partisan entrenchment against any realistic majoritarian challenge. Those maps lie well outside our nation's historical traditions, and we expect that they will be rare—especially if this Court affirms here and thus makes it clear that there are constitutional limits on partisan entrenchment.

More generally, however, Texas amici (as well as the Wisconsin legislature) exaggerate the extent to which exclusive or near-exclusive focus on partisan ends is an inevitable feature of redistricting. Nearly half of the States, including some that joined Texas amici's brief, have taken formal steps that reduce or eliminate the influence of partisan considerations on redistricting. This shows that partisan politics is not a necessary component of the redistricting process.

For example, many States require maps to be drawn by a group that is nonpartisan or bipartisan. Six States—Alaska, Arizona, California, Idaho, Montana, and Washington—have delegated the task of redistricting to independent commissions, on which elected officials may not serve as members. Alaska

Const., art. 6, § 8; Ariz. Const., art. 4, pt. 2, § 1(3); Cal. Const., art. 21, § 2(a)–(d); Idaho Code § 72-1502; Mont. Const., art. 5, § 14; Wash. Const., art. 2 § 43(2). Another six States—Colorado, Hawaii, Missouri, New Jersey, Ohio and Pennsylvania—use bipartisan commissions. Colo. Const., art. 5, § 48(1)(a)-(d); Haw. Const., art. 4, § 2; Mo. Const., art. 3, § 2; N.J. Const., art. 4, § 3, ¶ 1; Ohio Const., art. XI, § 1; Penn. Const., art. 2, § 17(a)-(b).

Even in a number of States where the legislature retains authority over redistricting, the initial task of recommending a map for legislative approval is delegated to a bipartisan "advisory commission." *See, e.g.*, Mass. Sen. R. 12[4]; Mass. House R. 17 & 18A[5]; Me. Const., art. IV, Pt. 3, § 1-A; R.I. Pub. Laws 2011, ch. 106, § 1; R.I. Pub. Laws 2011, ch. 100, § 1; Vt. Stat. Ann. tit. 17, §§ 1904, 1906; Va. Exec. Order No. 31 (2011). A districting map drawn through a nonpartisan or bipartisan process should be virtually unchallengeable as a partisan gerrymander, because plaintiffs will not be able to establish the intent prong—the invidious purpose of long-term partisan entrenchment.

Some states (including some which employ the nonpartisan or bipartisan commissions discussed above) also have chosen to limit the use of partisan affiliation to draw district lines, as a matter of state

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[4] *Available* at https://malegislature.gov/Laws/Rules/Senate (last accessed Aug. 31, 2017).

[5] *Available* at https://malegislature.gov/Laws/Rules/House (last accessed Aug. 31, 2017).

law. Nine States—California, Delaware, Florida, Hawaii, Iowa, Montana, New York, Oregon, and Washington—expressly bar state officials from drawing district lines for the purpose of favoring or disfavoring a political party. Cal. Const., art. 21, § 2(e); Del. Code Ann. tit. 29, § 804(4); Fla. Const., art. III, §§ 20, 21(a); Haw. Rev. Stat. Ann. § 25-2(b)(1); Iowa Code Ann. § 42.4(5); Mont. Code Ann. § 5-1-115(3); N.Y. Const., art. 3, § 4(c)(5); Or. Rev. Stat. § 188.010(2); Wash. Const., art. 2, § 43(5). Two of those nine States, Iowa and Montana, prohibit officials from using political data—such as past election results or voters' party registrations—in drawing districts. *See, e.g.*, Iowa Code Ann. § 42.4(5); Mont. Code Ann. § 5-1-115(3). Nebraska has a similar restriction. Neb. Leg. Res. 102 (1st Session 2011).

Finally, States also have adopted procedures that make the adoption of extreme partisan gerrymanders unlikely as a practical matter. For example, two States—Connecticut and Maine—require a two-thirds supermajority to approve redistricting plans, thus making it easier for a minority party to block a plan that is unfair. Conn. Const., art. III, § 6; Me. Const., art. IV, pt. 1, § 3.

None of these particular steps is required as a matter of federal constitutional law. As discussed, in most States the legislature draws the district maps. These deliberative bodies can and routinely do redraw their maps free of any invidious purpose, and without presenting the risk of permanent partisan entrenchment that necessitates a judicial response. A

constitutional standard prohibiting the most egregious forms of intentional, long-term partisan entrenchment therefore would still afford the States considerable leeway in their redistricting processes, and would not cause the widespread disruption that Texas amici fear. It would also vindicate the core democratic principles enshrined in our Constitution.

CONCLUSION

The Court should affirm the district court's judgment.

Respectfully submitted,

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